IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.709 OF 1992

Bank of India ... Plaintiffs

Vs.

Mohamed Asim Nazir Mohamed & Ors. ... Defendants

Ms. Swati Deshpande i/b M.S. Bodhanwala & Co. for the plaintiffs.

None for the defendants.

Mr. A.P. Gurav, Asstt. Prothonotary and representative of the Court Receiver present.

CORAM : SMT. RANJANA DESAI, J.

DATED : AUGUST 16, 2007.

P.C.:-

1. This is a bank suit. The plaintiffs have filed this suit against the defendants, inter alia, for a sum of Rs.3,69,521.88 together with further interest at 17.50 per annum with quarterly rests from the date of the suit till payment and/or realisation in respect of the Cash Credit facility.

2. The learned counsel for the plaintiffs instructed by M/s.

Bodhanwala & Co. submitted that the plaintiffs have instructed M/s. Bodhanwala & Co. to withdraw the suit. Fax letter dated 11/8/2007 addressed by the Assistant General Manager to M/s. Bodhanwala & Co. requesting them to withdraw the suit is taken on record and marked X. In the circumstances, the suit is allowed to be withdrawn and is disposed of as such.

3. The learned counsel appearing for the plaintiffs further states that by an agreement of hypothecation dated 13/11/1986 defendant 1 has created first charge by way of hypothecation in favour of the plaintiffs on the DCM Toyota vehicle bearing Registration No. MMK 5777 as security for due repayment to the plaintiffs of the balance in the said credit facility account with interest, costs charges and expenses and other monies. Under the said agreement of hypothecation, the plaintiffs have been given specific power in the events mentioned therein to seize the hypothecated vehicle, to appoint the Receiver thereof and to sell the same for recovery of its dues.

4. It appears that on 27/4/1992 this court appointed the Court Receiver, High Court, Bombay as Receiver for the purpose of

making inventory and to ascertain whether stocks referred to in the annexures to the plaint are in existence or not.

5. By order dated 5/1/1993, this court gave opportunity to the defendants to run the suit vehicle and earn money to pay the loan. Defendant 1 was directed to pay monthly instalment to the plaintiffs. This court directed that if defendant 1 commits any default of payment of any instalment, the Court Receiver shall sell the suit vehicle by private treaty or by public auction and pay to the plaintiffs the net sale proceeds thereof for appropriation towards the dues of the plaintiffs. The defendants failed to take advantage of this opportunity. The Court Receiver took possession of the suit vehicle. But it had become scrap. The plaintiffs, therefore, took out a chamber summons requesting this court to allow sale of the suit vehicle on “as is where is basis”. By order dated 1/12/2000, this court directed the Court Receiver to sell the suit vehicle on “as is where is” basis without fixing reserve bid. The Court Receiver was directed to hand over the net sale proceeds after deduction of costs, charges, expenses and commission to the plaintiffs. The Court Receiver's representative, who is present in the court, states that accordingly, the vehicle has been sold and Rs.25,151/- was

lying with the Court Receiver. As of today, however, a sum of Rs.24,426/- (approximately) is lying with the Court Receiver after making deduction of certain expenses incurred by him. The learned counsel for the plaintiffs states that in terms of order dated 1/12/2000, which has become final, the amount lying with the Court Receiver be directed to be handed over to the plaintiffs. Though the defendants have engaged advocate, they have not filed any written statement. Today also, neither the defendants nor their counsel is present. In the circumstances, the Court Receiver is directed to hand over the sale proceeds of the suit vehicle to the plaintiffs in terms of order dated 1/12/2000 passed by this court. The Court Receiver shall stand discharged thereafter.

[SMT. RANJANA DESAI, J.]